

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221855 **DATE:** April 18, 1986
MATTER OF: Challenger Piping, Inc.

DIGEST:

1. Failure of the low bidder to list specific manufacturers and suppliers of equipment the bidder was required to supply does not require rejection of the bid where the listing requirement was not intended to prevent bid shopping, but rather was intended to insure the use of acceptable suppliers and manufacturers, and the low bidder agreed to use suppliers which had been given prior approval by the procuring agency and were on a list included in the invitation.
2. The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform, without exception, the exact thing called for in the invitation. The required commitment to the terms of the invitation need not be made in the manner specified by the solicitation; all that is necessary is that the bidder, in some fashion, commit itself to the solicitation's material requirements.
3. Protest that second low bid is nonresponsive is academic and not for consideration where the protester has not presented a basis upon which to question a prospective award to the low bidder.

Challenger Piping, Inc. (Challenger), protests the proposed award of a contract to Fred B. DeBra Company (DeBra) under invitation for bids (IFB) No. 539-84-101, issued by the Veterans Administration Medical Center (VA), Cincinnati, Ohio for all necessary labor, material, equipment, and supervision to modernize a VA boiler plant. Challenger contends that the bids of the proposed awardee, DeBra, and the second low bidder, H. F. Randolph Co. (Randolph) are nonresponsive for failure to comply with an IFB special instruction which requires bidders to list the manufacturers and suppliers of major equipment and

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materials, thereby allegedly making Challenger's third low bid the lowest priced responsive bid. The VA is withholding award pending the resolution of this protest.

We deny the protest.

The IFB contained special instructions which required bidders to supply certain information with their bids and stated that a bid would be considered nonresponsive if it lacks the required information. Special instruction No. 2 required bidders to:

"List manufacturers and suppliers of major equipment and materials, including burners, deaerator, instrumentation, pumps, emergency generator, motor control center and temporary boilers [upon] which bid is based. If manufacturers or suppliers are different from those listed in section 15052 of this specification, bid shall include sufficient qualifying information about each to assure full compliance with the specifications. Bid will be considered non-responsive if any equipment or material on which bid is based is determined by the A/E [architect/engineer] Professional to not meet specification."

Section 15052 of the IFB listed acceptable manufacturers/suppliers of the major equipment for the boiler project. Under most of the required types of equipment, more than one manufacturer/supplier was listed as acceptable to the VA.

In response to special instruction No. 2, DeBra's bid stated that it would supply equipment of manufacturers/suppliers "in accordance with those listed in section 15052 of the specification." DeBra's bid did not specifically list which of the optional acceptable manufacturers/suppliers of the various products outlined in section 15052 that it proposed to use.

Challenger argues that one of the VA's reasons for requiring a list of manufacturers/suppliers was to prevent bid shopping. (Bid shopping refers to the seeking after award by the prime contractor of lower-price suppliers or subcontractors than those originally considered in the formulation of the prime contractor's bid). A. Metz, Inc., B-213518, Apr. 6, 1984, 84-1 C.P.D. ¶ 386). Challenger contends that, since the list of suppliers which DeBra

referenced in its bid (section 15052 of the IFB) contained many acceptable suppliers, acceptance of DeBra's bid would permit DeBra to bid shop.

The VA states that the purpose of the manufacturers/suppliers listing clause was "to insure that acceptable equipment would be furnished by the acceptable bidder." The agency argues that the solicitation sought to encourage bidders to use suppliers that were listed in section 15052 of the IFB and states, therefore, that the listing requirement was not an anti-bid shopping device, but a device to guaranty the use of acceptable suppliers. The VA states that all of the equipment items listed in section 15052 are standard commercial products and, therefore, there would not be a need for an anti-bid shopping provision. The VA concludes that DeBra's offer to use the suppliers listed in section 15052 is responsive to the IFB requirement.

We find that the clause in question, by its language, was not directed against bid shopping. The clause states that a bid will be considered nonresponsive if the equipment or material on which the bid is based is determined by the VA's A/E professional not to meet the specifications. We agree with the VA that this provision evidences an intention to insure that the commercially available equipment conforms to the government's specifications and not to prevent bid shopping. The VA also indicates, and Challenger does not dispute, that the equipment solicited is standard and commercially available. Thus, the danger of bid shopping--that the awardee may substitute a supplier after award which could lead to shoddy workmanship or other cost cutting measures--is not a significant concern. George E. Jensen Contractor, Inc., B-187653, Mar. 10, 1977, 77-1 C.P.D. ¶ 181. Under these circumstances, we think DeBra's bid need not be rejected for failure to state specifically which of the manufacturers/suppliers it planned to use. See John W. Cowper Co., B-190614, May 18, 1978, 78-1 C.P.D. ¶ 382; Dubicki & Clarke, Inc., B-190540, Feb. 15, 1978, 78-1 C.P.D. ¶ 132.

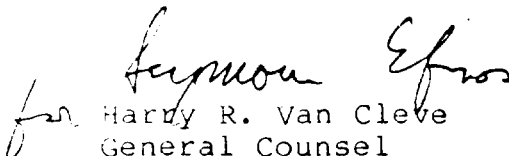
Challenger also argues that, although DeBra referenced the list of acceptable suppliers in section 15052 of the IFB, it did not comply strictly with the solicitation requirement for the submission of a list of manufacturers or suppliers. Challenger states that the requirement is for a list and the submission of anything else does not meet the literal terms of the solicitation. Challenger argues that such noncompliance should render DeBra's bid nonresponsive. We disagree.

Responsiveness concerns whether a bid constitutes an offer to perform, without exception, the exact thing called for in the invitation. Central Mechanical Construction, Inc., B-220594, Dec. 31, 1985, 85-2 C.P.D. ¶ 730; 49 Comp. Gen. 553, 556 (1970). Unless something on the face of the bid, or specifically a part of it, limits, reduces, or modifies the bidder's obligation to perform in accordance with the terms of the invitation, the bid is responsive. Energy Efficient Improvements, B-218014.3, Apr. 24, 1985, 85-1 C.P.D. ¶ 466; 49 Comp. Gen. 553, 556 supra. The required commitment to the terms of the invitation need not be made in the manner specified by the solicitation; all that is necessary is that the bidder, in some fashion, commit itself to the solicitation's material requirements. Fisher Berkley Corp; International Medical Industries, B-196432; B-196432.2, Jan. 9, 1980, 80-1 C.P.D. ¶ 26; A. A. Beiro Construction Co., Inc., B-192664, Dec. 20, 1978, 78-2 C.P.D. ¶ 425. Furthermore, a solicitation requirement is not necessarily material simply because it is accompanied by a warning that failure to comply will result in rejection of the bid. Fisher Berkeley Corp.; International Medical Industries, B-196432; B-196432.2, supra.

Here, as noted above, the material requirement in question was that the bidder commit itself to use manufacturers/suppliers that either were on the invitation's list of approved sources or to designate other manufacturers/suppliers and then include sufficient information to show full compliance with the specifications. The list itself was not the material requirement; evidence of competent and satisfactory manufacturers and suppliers was the material requirement. DeBra agreed in its bid to use only contractors that were already approved by the VA, and DeBra therefore committed itself to the material requirements found in special instruction No. 2. Consequently, we conclude that DeBra's bid was responsive to the requirement outlined in special instruction No. 2.

Because we find that Challenger's contentions concerning the responsiveness of DeBra's low bid are without merit and thus DeBra is in line for award, we need not address Challenger's contention concerning the responsiveness of the second low bid since the issue is academic. Hawthorne Aviation, B-211216, Apr. 5, 1983, 83-1 C.P.D. ¶ 369.

The protest is denied.


for Harry R. Van Cleve
General Counsel